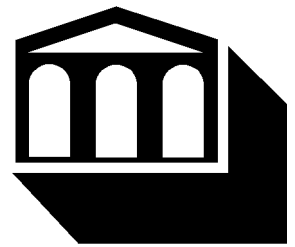


Domestic Violence

A Guide to Civil and Criminal Proceedings **(Second Edition)**



Michigan Judicial Institute

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**Michigan Domestic Violence
Prevention and Treatment Board**

By Mary M. Lovik, J.D.

With assistance from the
**Domestic Violence Benchbook
Advisory Committee**

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The research done on this benchbook is current through May 31, 2001. This benchbook is not intended to be an authoritative statement by the Justices of the Michigan Supreme Court regarding any of the substantive issues discussed. However, it does represent the consensus of the author and the advisory committee members regarding these issues.

Using This Benchbook

The Second Edition of *Domestic Violence: A Guide to Civil and Criminal Proceedings* addresses Michigan law governing domestic violence in the three courtroom contexts where it is most likely to be at issue:

- **In criminal proceedings (Chapters 3 to 5).** The Second Edition has added new discussion of relevant amendments to the Michigan Rules of Evidence that took effect September 1, 2001. It also addresses amendments to the spousal privilege statute (2000 PA 182 and 2001 PA 11) that took effect October 1, 2000 and May 29, 2001, and new legislation on electronic stalking (2000 PA 475) that took effect April 1, 2001.
- **In personal protection proceedings (Chapters 6 to 8).** The discussion in the Second Edition encompasses 1999 PA 268 and 269, and 2000 PA 112, which amended the PPO and PPO warrantless arrest statutes effective July 1, 2000. It also covers amendments to subchapters 3.700 and 5.900 of the Michigan Court Rules that took effect January 10, 2000 and September 1, 2001.
- **In divorce and child custody proceedings (Chapters 10 to 13).** The section on alternative dispute resolution has been revised to reflect the amendments to MCR 3.216 (governing domestic relations mediation) that took effect August 1, 2000. The ADR section also includes discussion of 2000 PA 419, which governs domestic relations arbitration effective March 28, 2001. A new section has been added on 2000 PA 422, which imposes restrictions on changes in a parent's legal residence after issuance of a custody order, effective January 1, 2001.

Chapter 9 addresses firearms restrictions that arise from criminal and personal protection proceedings. It takes into consideration 2000 PA 381 (effective July 1, 2001), which amends the requirements and procedures for obtaining a license to carry a concealed pistol in Michigan.

In addition to the legal discussion, the reader will find:

- General information about the dynamics of domestic violence (Chapter 1);
- A new chapter describing community resources that address domestic violence at the state and local levels (Chapter 2). This chapter includes an expanded discussion of ethical concerns with judicial participation in a coordinated community response to domestic violence (Section 2.6).
- An expanded appendix section that includes contact information for referral resources, the full text of the Batterer Intervention Standards for the State of Michigan, flow charts for personal protection actions involving a minor respondent, and screening resources for courts and mediators for use in cases involving domestic violence and child abuse.

To supplement the foregoing information, “best practice” suggestions are provided throughout the text. This supplementary information has been included primarily to address safety concerns that accompany the legal issues in cases involving allegations of domestic violence. The “best practice” suggestions come from the judges, attorneys, service providers, and court personnel who oversaw the drafting of this benchbook as members of its Advisory Committee. **The “best practice” suggestions in this benchbook represent the best professional judgment of Advisory Committee members, and are not intended to be authoritative statements by the Justices of the Michigan Supreme Court.**

In preparing this benchbook, MJI has made an effort to provide readers with an integrated resource that sets each type of court proceeding into its larger context. Allegations of domestic violence may simultaneously be at issue in multiple courts and multiple counties as criminal, domestic relations, and personal protection proceedings are instituted. Accordingly, each court involved in these disparate proceedings can best respond to the parties' situation if it acts with an understanding of how its decision-making might affect (or be affected by) other proceedings in the court system. Many of the “best practice” suggestions and cross-references in this benchbook are intended to remind the reader of the potential relationships between the criminal, personal protection, and domestic relations proceedings that are its subject matter.

Court proceedings involving allegations of domestic violence also take place within the local community as a whole. Domestic violence is a phenomenon of such complexity that no one social institution acting in isolation can provide an adequate response. For example, issuance of a personal protection order will not adequately protect a domestic violence victim unless violations of the order are swiftly and strictly enforced. A court's efforts to protect victims and hold abusers accountable will thus be most effective if they are coordinated with the actions of police, prosecutors, and other community service providers. Many of the "best practice" suggestions in this benchbook are included to alert the reader to areas where a coordinated response is particularly important.

The legal discussion in this benchbook is current as of May 31, 2001. The reader is cautioned that domestic violence is the subject of continuing legislative attention, so that statutory and court rule changes are likely after this date, particularly in the area of personal protection orders. The reader is further advised that much of Michigan's domestic violence legislation has been recently enacted. Particularly in the area of personal protection orders, many questions about this legislation remain unresolved, and diverse practices have developed across the state. MJI has attempted wherever possible to provide an accurate description of the law without bias toward any particular viewpoint. Where the law is ambiguous or silent on an issue, MJI has indicated the Advisory Committee's suggested resolution where the Committee could reach a consensus. **Advisory Committee suggestions represent the best professional judgments of Advisory Committee members, and are not intended to be authoritative statements by the Justices of the Michigan Supreme Court.** The law in this area is developing rapidly, and readers are encouraged to consult legislation and appellate opinions issued after the publication date of this benchbook.

Readers should also be mindful that the psychological and sociological aspects of domestic violence have only been the subject of concentrated scholarly attention for the past 25 to 30 years. There is still much to discover about this difficult subject, and much that remains controversial. A careful reader will therefore remain alert for new information about the nature and causes of domestic violence that comes to light after the publication date of this benchbook.

Although this benchbook is primarily intended for use by judges, it also contains information useful to law enforcement officers, court personnel, prosecuting attorneys, defense attorneys, private attorneys, and domestic violence service providers.

Domestic Violence: A Guide to Civil and Criminal Proceedings was first published in 1998 as one of three MJI benchbooks designed to meet the needs of judges and court employees assigned to the Family Division of the Circuit Court. In addition to this benchbook, MJI published a Juvenile Justice Benchbook in June, 1998, and a Child Protective Proceedings Benchbook, in May, 1999. Additionally, a Family Law Benchbook was produced by the Institute of Continuing Legal Education in Ann Arbor, under a contract with the State Court Administrative Office. This benchbook was originally distributed to Family Division judges and court employees in 1999.

Acknowledgments

Domestic Violence: A Guide to Civil and Criminal Proceedings was funded by a grant administered by the Domestic Violence Prevention and Treatment Board. The Michigan Judicial Institute thanks the Board for its generous support.

Work on this benchbook was overseen by an Advisory Committee comprised of judges, court personnel, prosecutors, private attorneys, law enforcement officers, legislators, and social service providers. Advisory Committee members reviewed those portions of the text that addressed their areas of expertise, and provided most of the “best practice” suggestions for this benchbook. These “best practice” suggestions represent the Committee members’ best professional judgments. They do not constitute recommendations from the Michigan Supreme Court, and should not be viewed as definitive in all cases. The Committee encourages each local court to develop individual policies for domestic violence cases in consultation with other service providers in its own community.

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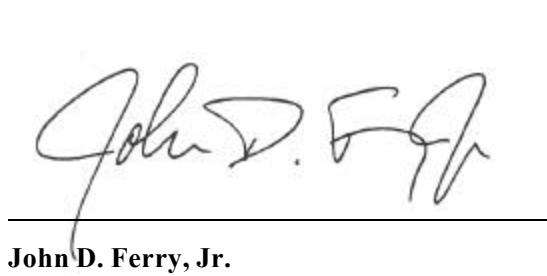
Mary Lovik, MJI Publications Administrator, researched and wrote this benchbook, and served as the project manager for its Second Edition. Research and editorial assistance for the Second Edition was provided by the following MJI staff members: Mary Fielding (Chapter 5), David Gruber (Chapter 11), Tobin Miller (Chapter 13), and Thomas Smith (Chapter 9). Ann Tschirhart, MJI Publications Coordinator, was responsible for the cover design. Cover art was provided by Julianna Lovik. Mary Ann McDaid, MJI Multi-Media Development Specialist was responsible for page layout and coordination of reproduction. Tricia Shaver, MJI Office Assistant, assisted with distribution.

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The Michigan Judicial Institute was created in 1977 by the Michigan Supreme Court. MJI is responsible for providing educational programs and written materials for Michigan judges and court personnel. In addition to formal seminar offerings, MJI is engaged in a broad range of publication activities, services, and projects that are designed to enhance the professional skills of all those serving in the Michigan court system. MJI welcomes comments and suggestions. Please send them to: **Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 334-7805.**



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September 30, 2001

